IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WA.No. 1811 of 2007

(AGAINST THE JUDGEMENT IN WPC.20259/2007 DATED 4.7.2007)

APPELLANT: PETITIONER IN THE WRIT PETITION:

PHILIPOSE ABRAHAM,
CHIRAYATHU REJISH VILLA
KUMPLAMPOIKA P.O.,
RANNI TALUK,
PATHANAMTHITTA.

BY ADV. SRI.M.AJAY

RESPONDENTS: RESPONDENTS IN THE WRIT PETITION:

1. THE STATE OF KERALA REPRESENTED BY ITS
   CHIEF SECRETARY,
   THE SECRETARIAT, THIRUVANANTHAPURAM.

2. THE ADDITIONAL CHIEF SECRETARY TO GOVERNMENT,
   HOME DEPARTMENT,
   THE SECRETARIAT, THIRUVANANTHAPURAM.

3. THE POLICE ESTABLISHMENT BOARD,
   REPRESENTED BY ITS CHAIRMAN,
   THE DIRECTOR GENERAL OF POLICE,
   POLICE HEADQUARTERS,
   THIRUVANANTHAPURAM

4. MR. SANAL KUMAR,
   ADVOCATE, PRESIDENT,
   ALL KERALA GAS AGENCY WORKERS UNION (CITU),
   CPI(M), AREA COMMITTEE OFFICE,
   THIRUVALLA.

5. MR.THOMAS JOHN,
   DYSP (ADMINISTRATION),
   PATHANAMTHITTA.

6. MR.MATHEW T.THOMAS, (DELETED)
   HON. MINISTER FOR TRANSPORT,
   THE SECRETARIAT, THIRUVANANTHAPURAM.

7. MR.KODIYERI BALAKRISHNAN, (DELETED)
   HON. MINISTER FOR HOME,
   THE SECRETARIAT, THIRUVANANTHAPURAM.

8. THE STATE PUBLIC INFORMATION OFFICER (DELETED)
POLICE HEAD QUARTERS,
THIRUVANANTHAPURAM.

RESPONDENTS 6 TO 8 ARE REMOVED FROM THE PARTY ARRAY AS PER THE ORDER IN I.A.NO.805 OF 2007 VIDE JUDGMENT IN APPEAL.

R1 TO R3 BY GOVERNMENT PLEADER SRI.BENNY GERVASIS
R5 BY ADV. SRI.S.SREEKUMAR
SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1811 OF 2007

Dated this the 28th September, 2007

JUDGMENT

H.L.DATTU, C.J.

In the Writ Appeal filed, the appellant has arrayed Mr.Mathew T.Thomas, Honourable Minister for Transport, Secretariat, Thiruvananthapuram; Mr.Kodiyeri Balakrishnan, Honourable Minister for Home, Secretariat, Thiruvananthapuram and The State Public Information Officer, Police Headquarters, Thiruvananthapuram as respondents 6, 7 and 8.

2. At the time of hearing of this appeal, appellant has filed an application, I.A.No.805 of 2007. In the affidavit filed in support of the application, at paragraphs 2 and 3 it is stated as under:

> "2. I filed IA 772/07 to have the Writ Appeal heard and disposed of emergently since I am due to retire in 6 months time and since my transfer before completing the minimum tenure has been stigmatic on my reputation and a blot on my career. In view of the fact that notices have not been issued to the 6th, 7th and 8th respondents and since service of notice on them will entail further delay in having the Writ Appeal heard, I am constrained to pray that they may be deleted from the array of party respondents and that their individual conduct need not be considered as an issue in this case. I had earlier filed IA 803/07 to delete R6 – R8 from the party array, reserving my right to implead them as additional respondents if found necessary during the future course of there proceedings. In supersession thereof, I am praying that they may be deleted from the party array, without reserving my right to implead them later on. I.A.803/07 may therefore also be dismissed as not pressed.
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> 3. It is therefore just and necessary in the interest of justice in this case that this Honourable Court may be pleased to delete respondents 6 – 8 from the party array and it is so humbly prayed."

3. In view of the request made by the appellant/applicant in the said application, respondents 6, 7 and 8 are deleted from the array of respondents.

4. The appellant is a Police Officer. He was working as Deputy

Superintendent of Police at Thiruvalla. He was in charge of the said Sub Division. In this appeal, the appellant calls in question the correctness or otherwise of the orders passed by the learned single Judge in W.P.(C) No. 20259 of 2007, dated 4th July, 2007. By the impugned judgment, the learned Judge has rejected the Writ Petition.

5. Ext.P5 is an order of transfer, transferring the appellant from Thiruvalla Sub-division to Idukki District. Before his transfer, he was posted as Deputy Superintendent of Police on 22.5.2006. He worked in the said place till he was shifted out on 29.6.2007 by the State Government by passing Ext.P5 order.

6. It is the correctness or otherwise of the said order was the subject matter of the Writ Petition. As we have already noticed, the learned single Judge has rejected the Writ Petition.

7. Sri. Ajay, learned counsel appearing for the appellant, would submit that pursuant to the orders and directions issued by the Apex Court in the case of **Prakash Singh** v. **Union of India** ((2006) 8 SCC 1); the State Government has promulgated The Kerala Police (Amendment) Ordinance, 2007. It is further stated that under Section 5 of the Ordinance, a substitution is made to Section 4 of the principal Act, namely, the Kerala Police Act, 1960. Section 4A, that is newly introduced under the Ordinance, provides for the minimum tenure of Police Officers. Sub-section (2) of Section 4A of the Ordinance carves out an exemption. According to the learned counsel, the impugned order of transfer is contrary to the observations made by the Apex Court and the Ordinance issued by the State Government.

8. Learned counsel, Sri. Ajay, would further contend that the State

Government could not have mechanically accepted the recommendation of the Board while transferring the appellant from Thiruvalla Sub-division to Idukki District. According to the learned counsel, the State Government, which is the appointing authority, should have considered the recommendation of the Board in the proper perspective and then only accepted the recommendation of the Board. Apart from this, the learned counsel would submit, during the entire career of the appellant, he had not received any black mark from his superiors and, therefore, the Board or the State Government could not have characterised that the appellant is an incompetent and inefficient Police Officer and even if they want to do so, at least an opportunity of hearing should have been given to the appellant before effecting the order of transfer, transferring the appellant from Thiruvalla Sub Division to Idukki District.

9. Respondents have filed a detailed counter in the appeal. They have justified their action.

10. The Supreme Court in the case of **Prakash Singh's case** (supra), at paragraphs 26 and 31 has observed as under:

> "26. Having regard to (i) the gravity of the problem; (ii) the urgent need for preservation and strengthening of the rule of law; (iii) pendency of even this petition for the last over ten years; (iv) the fact that various commissions and committees have made recommendations on similar lines for introducing reforms in the police set-up in the country; and (v) total uncertainty as to when police reforms would be introduced, we think that there cannot be any further wait, and the stage has come for issuing of appropriate directions for immediate compliance so as to be operative till such time a new model Police Act is prepared by the Central Government and/or the State Governments pass the requisite legislations. It may further be noted that the quality of the criminal justice system in the country, to a large extent, depends upon the working of the police force. Thus, having regard to the larger public interest, it is absolutely necessary to issue the requisite directions. Nearly ten years back, in Vineet Narain v. Union of India ((1998) 1

> SCC 226) this Court noticed the urgent need for the State Governments to set up the requisite mechanism and directed the Central Government to pursue the matter of police reforms with the State Governments and ensure the setting up of a mechanism for selection/appointment, tenure, transfer and posting of not merely the Chief of the State Police but also all police officers of the rank of Superintendents of Police and above. The Court expressed its shock that in some States the tenure of a Superintendent of Police is for a few months and transfers are made for whimsical reasons which has not only demoralising effect on the police force but is also alien to the envisaged constitutional machinery. It was observed that apart from demoralising the police force, it has also the adverse effect of politicising the personnel and, therefore, it is essential that prompt measures are taken by the Central Government.
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> ....
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> 31. ..... The aforesaid directions shall be complied with by the Central Government, State Governments or Union Territories, as the case may be, on or before 31.12.2006 so that the bodies aforenoted become operational on the onset of the new year. The Cabinet Secretary, Government of India and the Chief Secretaries of State Governments/Union Territories are directed to file affidavits of compliance by 3.1.2007."

11. Pursuant to the direction issued by the Apex Court, the State Government has come out with the Ordinance known as "The Kerala Police (Amendment) Ordinance, 2007. During the period of operation of the Ordinance, the Kerala Police Act, 1960 shall have effect subject to the amendments specified in Sections 3 to 6. Section 3 of the Ordinance provides for amendment of Section 2 of the Principal Act. The principal amendment made therein is to define the meaning of the expression 'Board' to mean the Police Establishment Board constituted under Section 7C. Section 4A is inserted to Section 4 of the parent Act. Section 4A reads as under:

> "4A. *Minimum Tenure of Police Officers*:- 1) The Government may ensure a normal tenure of two years from the date of assuming charge of the post to the Director General of Police; and to all officers holding charge of Police Stations, Police

Circles, Police Sub-divisions, Police Districts, Police Ranges and Police Zones:

Provided that the normal tenure shall not be applicable in cases of superannuation, promotion, reversion, suspension and leave.

(2) The Government or the appointing authority may, without prejudice to any other legal or departmental action, transfer any police officer before completing the normal tenure of two years, on being satisfied *prima facie* that it is necessary to do so on any of the following grounds, namely:--

(a) if he is found incompetent and inefficient in the discharge of duties so as to affect the functioning of the police force;

(b) if he is accused in a criminal case involving moral turpitude;

(c) initiation of departmental proceedings against him;

(d) if he exhibits a palpable bias in the discharge of duties;

(e) misuse or abuse of powers vested in him; and

(f) incapacity in the discharge of official duties."

12. Sub-section (1) of Section 4A of the Act provides that the State Government may ensure the normal tenure of certain officers working in the police establishment for a period of two years from the date of assuming charge of the post. The language that is used "normal tenure", that only means that a Police Officer is assured of his posting in a particular place for a period of two years and that does not mean that he cannot be moved out even before the expiry of the specified term in the exigencies of administration. The officers who are protected under the said Section are Director General of Police; all officers holding charge of Police Stations, Police Circles, Police Sub-divisions, Police Districts, Police Ranges and Police zones. It is an undisputed fact that the appellant is working in

Thiruvalla Police Sub-division as Deputy Superintendent of Police.

13. Proviso to Sub-section (1) of Section 4A of the Act states that the normal tenure of two years shall not be applicable in cases of superannuation, promotion, reversion, suspension and leave of a police officer.

14. Sub-section (2) of Section 4A of the Act carves out an exemption to Sub-section (1) of Section 4A of the Act. The said sub-section provides that the Government or the appointing authority may, without prejudice to any other legal or departmental action, transfer any police officer before completing the normal tenure of two years, if they are prima facie satisfied that it is necessary to do so on any of the following grounds. Under the Sub-section the grounds are also enumerated. They are: If an officer is found to be incompetent and inefficient in the discharge of his duties so as to affect the functioning of the police force or if he is accused in a criminal case involving moral turpitude or if he is facing any departmental enquiry proceedings or has shown a palpable bias in the discharge of his duties or has misused or abused the powers vested with him or if there is incapacity in the discharge of his official duties.

15. By the aforesaid Section, the State Government is expected to ensure that a police officer continued to function in a particular place of posting for a period of two years. Exemptions are provided in the proviso to the Sub-section. By introducing Sub-section (2) of Section 4A of the Act the Government has reserved certain powers to it to transfer a police officer before the completion of the normal tenure of two years. That could be in any one of the circumstances which we have already stated.

16. Section 7C of the Ordinance provides for establishment of Police

Establishment Board. Constitution of the Board requires to be done by the State Government. The Board shall be a departmental body consisting of the Director General of Police as Chairman and four other senior Police Officers of the Department of the rank of Additional Director General of Police as members. The term of office of the members of the Board, the procedure for the functioning of the Board and the guidelines to be followed by the Board in exercise of its functions shall be in the manner prescribed by the State Government either by framing the rules, regulations, guidelines etc. The State Government has not framed either the rules or the guidelines in this regard. Here itself, we hasten to add that, non-prescription of the rules or the guidelines will not come in the way of the appointing authority for effecting the transfer of a police officer, since the Ordinance itself provides the manner in which the orders of transfer requires to be passed. Section 7D of the Ordinance provides for the functions of the Board. Apart from others, the Board can make appropriate recommendations to the State Government regarding the posting and transfer of a police officer above the rank of Deputy Superintendent of Police.

17. In the instant case, the Board had met on a particular day. In its first meeting held, the Board had taken a decision to recommend the case of the appellant for transfer, to the appointing authority, namely, the State Government. The recommendation of the Board is accepted by the State Government and, accordingly it has passed Ext.P5 order dated 29.6.2007, transferring the appellant from Thiruvalla Sub-division to Idukki District.

18. In any service, it is said, transfer is an incident of service. The Supreme Court and the High Court have consistently held that the transfer is one

of the incidence of service and it is one of the conditions of implied service. Orders of transfer of a Government servant like any other administrative or executive orders are passed invariably in administrative purposes or in public interest. Such orders are normally outside the purview of judicial review by the Courts, except under circumstances like, if an order of transfer is made by an incompetent person or contrary to the Rules and Regulations; if it is done on mala fides or for collateral purpose. It is needless to say that the State Government, being an appointing authority, has the inherent right to transfer a Government employee from one place to another depending upon the exigencies of service. It is also well settled that it is for the appointing authority to take a decision who is to be transferred, on what ground to be transferred and to which place is to transferred. It is worthwhile to recall the pertinent observation made by the Bombay High Court in **Seshrao Nagorao Umap vs. State of Maharashtra,** (1985) II LLJ 73, wherein it is stated that "It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However, this power must be exercised honestly, bona fide and reasonably. It should be exercised in public interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive, it would amount to mala fide and colourable exercise of power". In the present case, it is not the case of the appellant that the order of transfer is on any one of the grounds which are stated earlier. The main case of the appellant is that the respondents have effected the transfer of the appellant from

one place to the other place, only on the ground that he is found to be not adequately competent and efficient which is affecting the over all functioning of the police force. In our opinion, the language so used by the Board while recommending the case of the appellant for transfer is in no way different from the language employed in Sub-section (2) of Section 4A of the Act.

19. The Board consists of very senior Police Officers. They have no mala fides or ill-will against the appellant. After taking into consideration the over all performance of the appellant, the Board has thought it fit to recommend the case of the appellant for transfer from one place to the other place. The recommendation of the Board is accepted by the State Government after due application of its mind to the recommendations made by the Board and accordingly, it has passed the order of transfer dated 29.6.2007. Since the order of transfer so made is in accordance with the Ordinance issued by the State Government, in our opinion, it cannot be said that the order of transfer is illegal or tainted with mala fides or for any other collateral purpose. Therefore, we cannot take exception to the order of transfer passed by the State Government. Therefore, in our opinion, the learned single Judge was justified in rejecting the Writ Petition filed by the appellant/petitioner questioning the order of transfer made by the appointing authority.

20. The learned counsel lastly contends that the impugned order is bad in law, since the appellant was not heard before passing the order. It is now well settled law that since transfer is an incident of service, an order of transfer cannot be said to have any adverse civil consequences and therefore, it is not necessary to give an opportunity of hearing before exercising such power.

21. In view of the above, we do not see any good ground to interfere with the impugned judgment. Accordingly, the Writ Appeal requires to be rejected and it is rejected. The request for grant of leave is rejected since it does not involve any substantial question of law which requires to be decided by the Apex Court.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.